

MINUTES
TEXAS BOARD OF PROFESSIONAL ENGINEERS
REGULAR QUARTERLY BOARD MEETING
1917 IH35 SOUTH
AUSTIN, TX 78741
NOVEMBER 19, 2009 – 10:30 A.M.

Call to Order. G. Kemble "Kem" Bennett, Ph.D., P.E., Presiding Officer, called the Regular Quarterly Board meeting of the Texas Board of Professional Engineers (TBPE) to order at 10:35 a.m. on November 19, 2009, at the Texas Board of Professional Engineers, 1917 IH35 South, Austin, TX. (NOTE: All votes are unanimous, unless noted otherwise.)

1. Roll Call and Welcome Visitors.

G. Kemble Bennett, Ph.D., P.E.	Chair
Jose Cardenas, P.E.	Vice-Chair
Shannon K. McClendon	Secretary
Govind Nadkarni, P.E.	Member
Gary Raba, D. Eng., P.E.	Member
Elvira Reyna	Public Member
Edward L. Summers, Ph.D.	Treasurer
Daniel Wong, Ph.D., P.E.	Member

A quorum was present. Mr. Jeb Boyt, Esq., was present to provide legal counsel. Also present were Emeritus Board Members Mr. Edmundo Gonzalez, P.E., and Mr. Jose Guerra, P.E.

The following staff members were present:

Lance Kinney, P.E.	Deputy Executive Director
C.W. Clark, P.E.	Director of Compliance & Enforcement
David L. Howell, P.E.	Director of Licensing
Jeff Mutscher	Director of Finance
Dorothy Nieto	Executive Assistant

Visitors. Richard Mayer, Ph.D., KBSI/TAMU; Trish Smith, Executive Director, Texas Society of Professional Engineers (TSPE); Joe Graff, Representing TXDOT; Brad Turner; Kyle Hunter; Robert Murry, MTM; Brad Truman, MTM; Peyton McKnight, Texas Council of Engineering Companies; Kyle Womack, TSPE.

2. Public Comment. None.

3. Consent Agenda (The following items may be acted upon under Consent Agenda and are marked with an asterisk* on the Regular Quarterly Board Meeting Agenda)

- February 27, 2007, Joint Advisory Committee Minutes
- August 19, 2009, Licensing Committee Minutes
- August 20, 2009, Policy Advisory Opinion Committee Minutes
- August 20, 2009, Regular Quarterly Board Meeting Minutes
- Administrative Reports and Status of Court Cases/Dismissed Cases
- Licensing Applications.

It was MOVED/SECONDED (Nadkarni/Raba) to approve the Consent Agenda with the minor modification made to the Licensing Committee minutes as recommended during the Licensing Committee meeting on November 18, 2009. A vote was taken, and the MOTION PASSED.

Discuss and Possibly Approve Board Minutes:

4. ***(Consent Agenda)** Discuss and possibly approve minutes of the August 20, 2009, Regular Quarterly Board Meeting.

Discuss and Possibly Accept Committee Minutes:

5. ***(Consent Agenda)** February 27, 2007, Joint Advisory Committee Minutes
6. ***(Consent Agenda)** August 19, 2009, Licensing Committee Minutes

7. ***(Consent Agenda)** August 20, 2009, Policy Advisory Opinion Committee Minutes

Agenda items 4-7 were approved under the Consent Agenda, see agenda item #3 above.

Discuss and Possibly Act on Reports:

8. Budget Reports (Jeff Mutscher)
- FY09 4th Quarter Budget Report
 - Annual Financial Report (AFR)
 - Section 8(b) Report

Mr. Mutscher reviewed the end of fiscal year budget, Annual Financial Report, and the Section 8(b) reports with the Board members. No action was required.

Dr. Summers questioned whether the AFR cover letter stating the Comptroller's Office does not require the financial report to comply with GASB 34 makes the Board's report different from other agencies. Mr. Mutscher reported that the Board's annual financial report is in compliance with all Comptroller requirements and the cover letter language is standard for all state agencies that are not required to have an independent audit. The financial report will be included in the State of Texas Comprehensive Annual Financial Report.

9. **Board Members' Activity Reports.**

The activity report is included for information purposes only. No action required. Ms. McClendon thanked the Board members that have made outreach presentations on behalf of the Board.

10. **Emeritus Members' Activity Reports.**

The emeritus members' activity reports are included for information purposes only. No action required. Mr. Gonzalez thanked the Board for the gifts sent to him during his stay at the hospital. He also shared with the Board his recent experience at an ABET observer at the Texas A&M University; he mentioned that due to confidentiality he is unable to share any of the discussion or outcome of the visit. Ms. McClendon mentioned that the Board received a kudos email regarding Mr. Gonzalez's assistance as an ABET observer. Mr. Guerra also shared his ABET observer experience and did not share any of the discussion or results due to confidentiality policy.

Discuss and Possibly Act on Personnel Matters:

11. **Personnel Matters—this agenda item will be considered under executive session as authorized under Government Code §551.074.**

• **Executive Director--Retirement Announcement**

Dr. Bennett announced the retirement of Ms. Dale Beebe Farrow, Executive Director with the Board, and thanked her for her service to the Board and especially to the engineering profession.

• **Executive Director Vacancy-- including but not limited to action to appoint a search committee or appoint an Executive Director.**

The Board went into executive session at 10:50 a.m. to discuss the executive director vacancy further as authorized under Government Code §551.074.

The Board came out of executive session at 11:48 a.m. to continue with the open meeting. Dr. Bennett announced that there was no action taken during executive session.

It was MOVED/SECONDED (McClendon/Nadkarni) to appoint Lance Kinney, P.E., as Interim Executive Director effective December 2, 2009. A vote was taken, and the MOTION PASSED.

It was MOVED/SECONDED (Nadkarni/Raba) to ask the Chair to appoint a search committee and a chair for the search committee during the November 20, 2009 meeting.

Dr. Bennett appointed Gary Raba, D.Eng., P.E., as the Chair of the search committee, and Govind Nadkarni, P.E., Edward L. Summers, Ph.D., and himself as members of the Search Committee. The Search Committee was charged with screening all applicants and bringing forward the charge of what the Board is looking for in an Executive Director for the Board.

A vote was taken, and the MOTION PASSED.

Dr. Bennett expressed on behalf of the Board that they believe there are exceptional internal candidates for the Executive Director position. However, the Board would like to open the position to outside applicants as well.

Discuss and Possibly Act on Issues Regarding Committee Reports or Items on the Committee Agendas:

12. Enforcement Committee Meeting. (Daniel O. Wong, Ph.D., P.E.)

- Review, discuss, and possibly recommend rule changes to sanctions listed in §139.35, Sanction and Penalties
- Consideration and recommendations for establishing the severity of disciplinary action based on each of the items identified in §139.35 (a) (1)-(6) (i.e., multiplier, percentage, or weighting factors).
- Consideration of suggested sanctions for licensee specific violations (§139.35 (b)) and possibly establishing minimums for certain violations.
- Consideration of suggested sanctions for unlicensed practice or offering of engineering services or use of engineer title in §139.35 (c) and (d).
- Consideration of suggested sanctions for governmental entities for violations of the Act (§139.35 (e)).

Dr. Wong reported on the Enforcement Committee actions regarding the sanctions and penalties as listed above. The staff was directed to look into the administrative penalties and review the ten factors and consider a weighting factors and philosophy behind them and present recommendations to the committee at the next scheduled meeting. The recommendations will be presented to the Board if action is required. He added that the suggested sanction tables are appropriate and staff was directed to keep working with these tables. There is no action required by the Board. Board members were asked to provide any comments and/or suggestions to staff.

13. Licensing Committee. (Shannon McClendon, Acting Chair)

- Applications for Licensure

Ms. McClendon mentioned that the Licensing Committee made some modifications to the minutes. She made recommendations for certain language that staff should consider using for future meetings. She reported the results of the seven personal interviews:

Brandon Nichols Ault requested approval to take the PE exam. He passed the FE exam in 1999. He was referred to the committee because of a criminal conviction issue for which he had deferred adjudication and completed all the terms of his case.

It was MOVED/SECONDED (McClendon/Cardenas) to approve Mr. Ault to take the PE exam. A vote was taken and the MOTION PASSED.

Zachary B. Ryan requested approval to take the PE exam. He passed the FE exam in 2005. He was referred to the committee because of a criminal conviction issue and has completed his terms.

It was MOVED/SECONDED (McClendon/Summers) to approve Mr. Ryan to take the PE exam. A vote was taken and the MOTION PASSED.

Guillermo Garza DeHoyos requested approval to take the PE exam. He passed the FE exam in 2005. He was referred to the committee because of a criminal conviction issue and has completed his terms. Staff found Mr. DeHoyos had a criminal conviction and brought to the applicant's attention. The applicant believed it was considered a traffic violation and immediately corrected his application. The Committee informed Mr. DeHoyos that a DWI is not a traffic violation but a serious conviction. The applicant was placed on pre-trial diversion which he completed.

It was MOVED/SECONDED (McClendon/Summers) to approve Mr. DeHoyos to take the PE exam. A vote was taken and the MOTION PASSED.

Lucio Trujillo requested approval to take the PE exam. He passed the FE exam in 2006. He was referred to the committee because of a criminal conviction issue which was changed to a traffic violation. The applicant was informed that the Board takes all violations seriously.

It was MOVED/SECONDED (McClendon/Reyna) to approved Mr. Trujillo to take the PE exam. A vote was taken and the MOTION PASSED.

John Christopher Renedo appeared before the Committee in August and requested approval to take the PE exam. He passed the FE in 2002. The applicant had a criminal conviction and the Committee was also concerned with other aspects learned in the initial interview. The applicant was asked to appear before the Committee again in November. On his own initiative, Mr. Renedo took and completed an Anger Management Course. He also provided additional favorable references.

It was MOVED/SECONDED (McClendon/Wong) to approve Mr. Renedo to take the PE exam. A vote was taken and the MOTION PASSED.

John Shapelhamp requested approval to take the PE exam. He passed the FE exam in 2004. He was referred to the committee because of a criminal conviction issue and he completed his sentence in 2006. Before making a final decision the applicant was asked if he has any pending convictions. The applicant responded that he had another pending legal charge for a potentially related offense and his court date is scheduled for November 20, 2009. The applicant was asked to reappear before the Committee in February. No action was taken by the Committee.

Richard Mayer, Ph.D., requested licensure as a PE in Texas by waiver of the FE and PE exams under the engineering educator waiver rules. Dr. Mayer is employed by Texas A&M University, so Dr. Bennett recused himself from all discussion or action regarding this applicant. Dr. Wong was present at the Licensing Committee meeting as an alternate to maintain a quorum. The committee members had questions on how much of Dr. Mayer's time was spent being a professor versus consulting. The committee recommended the FE and PE waiver on a 2 to 1 vote; Ms. McClendon and Mr. Greer in favor, Dr. Wong abstained. The committee believed this candidate was very qualified to receive the waiver. The Licensing Committee will review the Educator's waiver rule at the next scheduled meeting.

It was MOVED/SECONDED (McClendon/Reyna) to approve both the FE and PE waiver for Dr. Mayer.

The Board discussed the intent of the engineering educator exam waiver rules. While Dr. Mayer has an exceptional vitae outlining his outstanding work experience, he is currently teaching one class and some Board members do not believe he qualifies for the waiver under the educator rule. Mr. Boyt mentioned that the current rule does not mention any standards for qualifying as an educator. Mr. Cardenas commented that the intent of the rule was that the educator be a full time professor and that Dr. Mayer's application states that his primary employer is his consulting firm. Dr. Summers stated that he believes that anyone wishing to become a professional engineer should be granted a licensed through the examination process. Ms. McClendon stated that the rule is unclear and does not specify the qualifications for granting an educator a professional license. Mr. Boyt responded that the rule does not speak to the Board's concern.

Dr. Mayer thanked the Board for their consideration and apologized for possibly misunderstanding the rule. He informed the Board that he does not require a PE for his current employment. He stated that his interest in gaining a professional license is to be a role model to his students. He commented that according to the current Board rules, he is an engineering educator. As an applicant, he was not aware of the intent of the rule, and believes he qualifies for the waiver.

Ms. McClendon asked emeritus member Edmundo Gonzalez to share his opinion based on his history with the Board. Mr. Gonzalez mentioned that the Board actually went to the universities to recruit professors to become professional engineers and serve as role models to their students.

A vote was taken, and the MOTION FAILED, 2 to 5 with 1 recusal; McClendon and Reyna in favor; Cardenas, Nadkarni, Raba, Summers, and Wong against; Dr. Bennett recused himself from any action on this applicant.

It was MOVED/SECONDED (Nadkarni/Cardenas) to waive the FE exam and allow Dr. Mayer to take the PE exam. A vote was taken, and the MOTION PASSED 5 to 1 with 1 abstention and 1 recusal; Cardenas, Nadkarni, Raba, Reyna, Wong in favor; Summers against; McClendon abstained. Dr. Bennett recused himself from any action on this applicant.

Ms. McClendon next addressed the NCEES 16 hour structural engineering PE exam that will be implemented in 2011. The president of Structural Engineers Association of Texas (SEAoT) addressed the committee and offered SEAoT's opinion regarding the new 16 hour exam. Mr. Luke represented SEAoT and offered their input and assistance and a list of points of contact that are willing to assist the Board. SEAoT understands that some other states currently have an additional structural engineering exam which is required in addition to the NCEES exam. Ms. McClendon added that is very exciting to hear there are professional engineers willing to assist the Board with this task. The Licensing Committee directed staff to develop a task force under the leadership of Mr. Nadkarni. Mr. Nadkarni commented that NCEES developed a task force to design the 16 hour exam. Ms. McClendon mentioned that this topic will also be discussed at the Industry Advisory Committee. Dr. Bennett added that the Board will also reach out to as many structural engineers as possible to get their opinion regarding this issue. Mr. Luke informed the Board that the National Council of Structural Engineers Associations is another group that would be a good resource for the Board.

Prior to breaking for lunch, Dr. Bennett presented Ms. Dale Beebe Farrow, P.E., with certificates and gifts in recognition of her retirement. Ms. Beebe Farrow thanked the Board and she thanked her staff and all the organizations for their support as well.

The Board took a lunch break at 12:51 pm. The Board reconvened at 1:21 pm.

Ms. McClendon mentioned that November 19, 2009, was the anniversary of the Texas A&M bonfire.

Mr. Howell reviewed the report included as part of the exhibits. He opined that the increase in firm registrations may be due to the rule change requirement. Mr. Nadkarni added that NCEES reported that the number of examinees has been dropping in other states while Texas' numbers have increased.

Mr. Kinney reported that the Board may receive confirmation on the agreement with Engineers Canada by the end of the year. The TBPE staff met with the South Korean Professional Engineers Association (KPEA) to discuss the Texas licensure process. There is currently a South Korean/US free trade agreement that has been initially signed but not ratified by Congress. The KPEA has signed an agreement with NCEES to offer the FE and PE exams in South Korea.

Mr. Kinney reported that the software engineering exam has been approved and is moving forward. A steering committee member will be selected from nominees from each of the societies and agencies involved. Texas is assisting with the selection of a Chair for the steering committee. The licensing committee will be looking at the scope of practice and defining the edges of software engineering.

14. Policy Advisory Opinion Committee Gary Raba, D.Eng., P.E.

- EAOR #25 - Licensure requirements for corrosion control services for water transmission and distribution pipelines. Presentation and discussion of research material gathered related to this request. Consideration for acceptance or rejection.

Staff was directed to do additional research on redefining the request and will present the results at the next scheduled Policy Advisory Committee meeting.

- EAOR #27 – Request for advisory opinion regarding Storm Water Pollution Prevention Plans and Erosion and Sedimentation Control Plans. Review results of stakeholder meeting and draft opinion.

This policy advisory request was withdrawn by the requestor. The Texas Council of Engineering Companies will continue to discuss this issue further with the City of Austin.

- EAOR #28 – Preliminary Documents. Request for the Board’s opinion of what constitutes an engineering preliminary document and the intended use and value of such a document to the client or entity. Consideration of written response.

The committee asked that the response be signed by the Executive Director and sent to the requestor.

Discuss and Possibly Act on Reports or Items reported by Deputy Executive Director:

15. Deputy Executive Director’s Report:

- **Activity Report**

The activity report was included as information only. Mr. Kinney reported that his trip to Lubbock included several outreach presentations.

- **Engineering Education Task Force Report (BS+30)**

Mr. Kinney contacted Jerry Carter, Executive Director with NCEES, regarding Ms. Beebe Farrow’s replacement on the Engineering Education Task Force. NCEES President Whitman appointed a representative from Alabama to replace Ms. Beebe Farrow.

- **Performance Measures**

The Board was given out a handout of performance measures. Mr. Kinney reviewed the measures with the Board.

- **Report on Korean Delegation Visit**

This report was given under the Licensing Committee report, see agenda item #13 above.

- **Response from FEMA-Flood Elevation Certificates**

A letter was submitted to FEMA addressing the Board’s concern. The Board received two response letters which were included as Board exhibits.

- **AG Opinion request by Representative Keffer regarding municipal enforcement pursuant to §1001.402**

This opinion is tied to the City of Brownwood Agreed Board Order. Staff is working with General Counsel to provide a response by the November 30 deadline. Mr. Boyt mentioned that the key is that currently the Board does not have any rules regarding the statutory provision. Mr. Boyt recommends the Board consider a proposed rulemaking to resolve this issue. The opinion response will be given by April 2010.

- **JAC Update**

A JAC meeting was held August 21, 2009. A JAC subcommittee was appointed and will meet December 11, 2009. The Sub-JAC will look at the overlap areas and a process on how to handle cases from each agency. The JAC will meet again February 23, 2010.

- **Update on TSPE vs. TBAE lawsuit**

District Court referred the cases back to the State Office of Administrative Hearings (SOAH).

- **TSPE Settlement Proposal**

Mr. Kinney reported that it is his understanding that the issue about returning to SOAH is on hold at this time pending the consideration by TBAE of a settlement proposal offered by TSPE. Mr. Boyt added that TSPE realizes that the court cases could potentially drag on for a long time. The TSPE proposal would ask the JAC’s involvement so the two Boards may agree that matters should be referred to the JAC before any enforcement is acted on. Mr. Boyt clarified that this is only a suggestion and would not bind the JAC to operate this way. Ms. Smith added that she responded to the District Judge requesting she reconsider her decision and to hold off on issuing a ruling pending the settlement agreement and clarifying some of the evidence provided by TSPE. Mr. Kinney commented that the Architects Board will be presented with the proposal at their next scheduled regular

board meeting. The TBPE Board did not take any action on this agenda item. Dr. Bennett added that the two Board chairs are discussing the charge of the Sub-JAC.

- **Outreach Activities**

Mr. Kinney reviewed the outreach activity report included as a Board exhibit. The program is being well received and going well.

Discuss and Possibly Act on Enforcement/Disciplinary Matters:

16. ***(Consent Agenda) Administrative Reports and Status of Court Cases/Dismissed Cases.**

Agenda item #16 was accepted under Consent Agenda; see Consent Agenda #3 above.

17. **Agreed Board Orders.**

1. City of Brownwood, Texas (Elvira Reyna)

Mr. Boyt advised the Board to go ahead with the City of Brownwood (City) signed agreed board order. Mr. Clark addressed the Board and discussed the agreed board order signed by the City of Brownwood's attorney and city manager. An informal conference was set up at Brownwood's request. The informal conference resulted in the agreed board order before the Board. Mr. Boyt informed the Board that by accepting the agreed board order the matter will be closed.

It was MOVED/SECONDED (McClendon/Wong) to accept the City of Brownwood's agreed board order as presented. A vote was taken and the MOTION PASSED. Mrs. Reyna abstained from any action on this agenda item.

18. **Consent Orders.**

Disciplinary Matters – Non-Practice Violations

2. Melvin Gary Glass, P.E.
3. Robert Steven Jones, P.E.
4. Keith Edward Parkan, P.E.

Disciplinary Matters – Practice Violations

5. Louis Faraklas, Jr., P.E.
6. John L. Loudermilk, P.E.

Sanctions Against Non-License Holders

7. Peter Subtelny

It was MOVED/SECONDED (Nadkarni/McClendon) to accept all the consent orders under agenda item #18 as presented. A vote was taken and the MOTION PASSED.

Firm Registrations/Sole Proprietorship Sanctions

None

Cease and Desist Order, Agreements, Injunctions/Default Judgments, Criminal convictions, and Other Items Agreements

8. Mike Dunn, City Administrator for City of Emory

No action was required on the above agenda item.

19. **Status of State Office of Administrative Hearings Cases**

Mr. Boyt mentioned that he did not have a report to give at this time.

Discuss and Possibly Act on Licensing Applications Requiring Board Ruling:

20. *(Consent Agenda) Licensing Applications

Vote or Reconfirm Votes Pursuant to Board Rule §133.87:

- Approved for Licensure
- Not Approved for Licensure
- Waivers – Both
- Waivers – FE
- Approved for Exams
- Exams Not Approved

Agenda item #20 was accepted under Consent Agenda, see agenda item #3 above.

Discuss and Possibly Act on Other Matters

21. Issues from Board members for future meetings.

Ms. McClendon shared with the Board members an article from the *Wallstreet Journal* regarding the FAA computer glitch that caused several airline cancellations and delays.

22. Future TBPE meeting dates

Adjourn.

The meeting was adjourned by the Chair at 2:05 pm.

Date minutes were approved as submitted: February 25, 2010